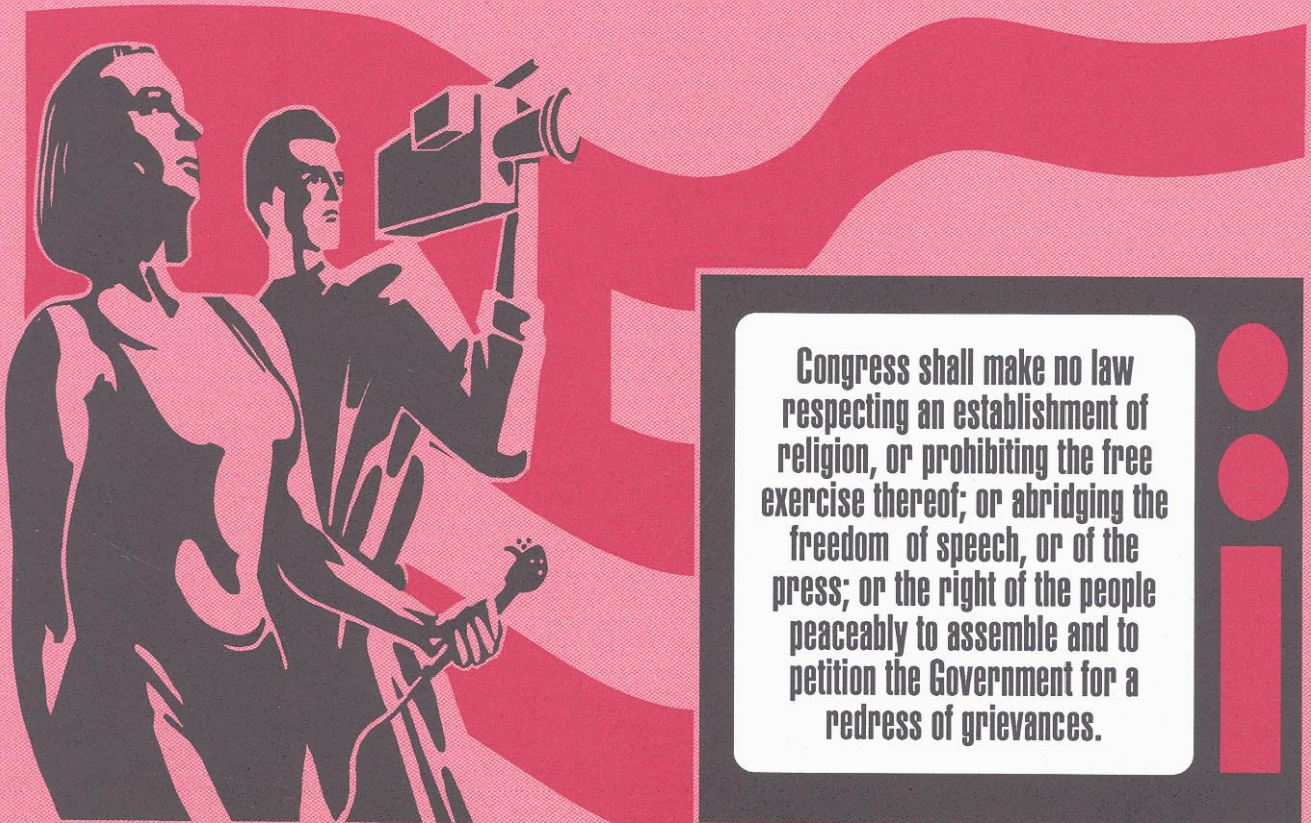


# CTR

COMMUNITY TELEVISION REVIEW

A Publication of the National Federation  
of Local Cable Programmers  
NOVEMBER / DECEMBER 1991  
VOLUME 14, NO. 5

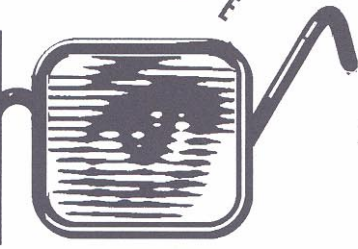


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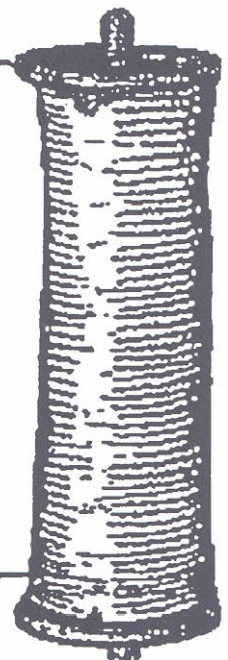
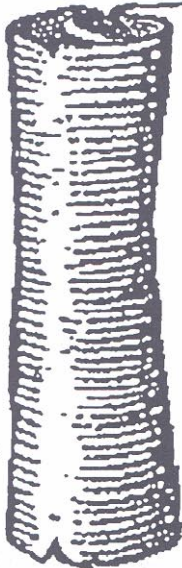
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# CTR

NOVEMBER/DECEMBER 1991  
VOLUME 14, NUMBER 5

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**Community Television Review** is published bi-monthly by the National Federation of Local Cable Programmers. Subscriptions available at \$15 a year for six issues. Send subscriptions, memberships, address changes and inquiries to: NFLCP, PO Box 27290, Washington, D.C. 20038-7290. Telephone (202) 393-2650.

Address advertising inquiries to: Community Television Review, 15 Ionia SW, Suite 201, Grand Rapids, MI 49503-4113. Phone (616) 454-6663

Bulk orders for additional copies are considered on a case-by-case basis. Contact the national office for rates and delivery.

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## ABOUT THIS ISSUE: Flexing the First!

In reading this issue, it will strike you that the First Amendment we hold so dear is in serious jeopardy. The authors this issue sound the praises of the First, but impassionately warn us of the grave challenges ahead facing this bedrock document.

That the First Amendment is under fire cannot be denied. In the course of human liberty, there have always been those who are all too ready to sacrifice a measure of freedom for a modicum of security in the name of real or imagined threats.

But let's not forget that this issue is also a celebration. The First Amendment marks 200 years on December 15, and there probably hasn't been a one of those years that it hasn't had to weather some sort of assault on its integrity.

It is precisely folks like us, though—the writers this issue, community media professionals, the thousands of independent producers out there—that have allowed our cherished right to free expression to survive into its third century.

By exercising those freedoms guaranteed by the First Amendment, together we have contributed to its defense and its strength. We do it daily in everything we do, from the printed word to the fibered image. While not all of us can be out there heralding its tenets and sounding the threats to its existence, we're doing a part in the very things we do.

So here's to the First, may it never be last.

—Tim Goodwin  
Managing Editor



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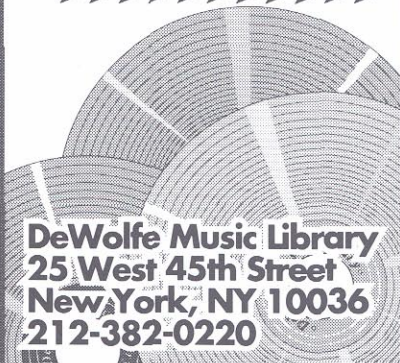
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## '94 Convention to Sacramento

Sacramento, CA has been selected by the NFLCP as the site of the July 1994 national convention. Some 1500 are expected to attend, representing all 50 states and a number of foreign countries.

The 1992 convention will be held in the Twin Cities, at the St. Paul Radisson Hotel, St. Paul, MN, July 15-19. Atlanta, GA will be the site of the 1993 convention. Exact dates and sites for 1993 and 1994 have yet to be chosen.

## Small Is Beautiful

Community access centers come in all sizes, ranging from those with budgets in the hundreds of thousands of dollars to those run on a shoestring.

The recently-formed Small Access Center Special Interest Group (SIG) invites all small access centers/operations to join together to share information and to recognize the progress being made on small budgets and in small communities.

The Small Access Center SIG has distributed a questionnaire to access center/operations regarding the basics—size of system, operating budget, staff/volunteers, number of programs, equipment, etc.

Responses to this questionnaire will provide a base of information regarding the complexity and variety of resources that are woven together in smaller access operations to provide community television access.

The questionnaire also asks for two "good ideas", two problems, and any incentives for volunteers. Responses as compiled will provide valuable information and a shot in the arm for small operations.

NFLCP members who join the SIG (\$10/year) will receive results of the small access center survey—facts, figures and ideas. Members may contact Greg Epler Wood at PO Box 871, North Bennington, VT 05257 for a copy.

Information on NFLCP membership is available through the national office.

*ATTN: Large Access Centers—The Small Access Center SIG needs your help. If you know of any small access operations ("small" budget or "small" community size) please notify Greg Epler Wood at the address above or Anita Stech, PACT, 2420 E. 6th St., Duluth, MN 55812.*

## Upcoming Board Meetings

The NFLCP Board of Directors will meet January 17-19, 1992 at the Washington Marriott Hotel in Washington, DC.

Meetings are open to members and the public, or members can have their views voiced by their regional board representatives (See names and addresses elsewhere in this issue).

The board meets four times a year. Other dates currently scheduled are April 10-12, 1992 in

## CONNECTIONS

Tucson, AZ (site to be arranged) and during the national convention, July 15-19, in St. Paul, MN.

For more information, contact the national office at (202) 393-2650.

## 1992 National Media Awards

The Retirement Research Foundation, a private philanthropy devoted to improving the quality of life of older persons in the US, has issued a call for entries for their 1992 National Media Awards, a competition for recently produced media on issues related to aging.

Goal of the awards is to identify and promote the visibility of outstanding films, videotapes, and television programs for and about aging or aged people and to encourage excellence in media productions on related issues.

A number of categories are represented, including a "community video award", for the best community video program, produced or co-produced by a community group or older people for cable or public television broadcast.

Prizes range from \$500 to \$5,000. Entry deadline is February 4, 1992. For application and further details, contact Ray Bradford, Project Director, RRF National Media Awards, Center for New Television, 1440 N. Dayton, Chicago, IL 60622 or call (312) 951-6868.

## Accessing the NFLCP

**Jobline.** For access jobs across America, or to post job openings, call (202) 393-2653.

**Bulletin Board.** To connect, call (217) 359-9118, and set your computer's modem to 300, 1200 or 2400 baud, 8 bits, 1 stop bit, no parity.

**National Office.** Call (202) 393-2650, or write PO Box 27290, 666 11th St. NW, Suite 806, Washington, DC 20038-7290.

## Computer Show On the Bird

PCTV Live!, a 30-minute television show about personal computing, is available off the bird for rebroadcast on cable channels. The commercial-free show, which launched in November, will provide "a quick but comprehensive overview of the software, hardware, and technology in the field today to make computing not only easier, but more enjoyable to the end user," according to host Victoria Hall Smith.

The program is uplinked on Galaxy 6, Transponder 17 (C-band) weekly on Thursdays at 4 p.m. EST, with taped feeds at 10 p.m. EST and 11 a.m. EST Sundays. For more info, contact Sharry Manning, PCTV, North Main St., Newport, NH 03773 (603-357-5898).

*God forbid we should ever be twenty years without a rebellion.*

*—Thomas Jefferson, 1787*

## FROM THE CHAIR Challenge for Change

Our field confronts change every day—changing funding expectations, changing political environments, and changing technology come to mind. The organization that serves this field must consider how it will focus its own resources in order to best serve members and strengthen community-based television in these challenging times.

At its October meeting, the NFLCP Board spent a full day addressing these issues with management expert Sue Dicile. Sue has worked with access centers and the NFLCP before, and is aware of how PEG access works as well as our organization's values. With extensive input from our delegates, the Board identified three major long-term goals through which the NFLCP can serve our field and our members:

- **Develop a stable and supportive legal framework for access operations.** NFLCP has adopted a strong policy platform, crafted a legislative agenda, and sought to bring the interests of the PEG access community to lawmakers. This effort, which delegates consistently named as a top priority, will be developed as a crucial service to members.

- **Educate the public about PEG access and the NFLCP in order to build support and awareness.** We must actively cultivate positive

images and awareness of PEG programming, and support our members as they do the same in their own communities.

- **Diversify access funding.** Many of us have learned that a single funding source can dry up, whether it is dedicated access payments or a portion of franchise fees. NFLCP will be working with members to identify additional funding options and educating members about this survival skill.

Of course, good ideas are never good enough without a means to put them into effect. To that end, the Board appointed a Strategic Planning Group, to be led by Fernando Moreno, the Board's Vice-chair. Fernando will be joined by the four standing committee chairs, the regional chairs' representative to the Executive Committee (Ron Cooper), and Executive Director T. Andrew Lewis.

With a vision and a means to pursue it, the NFLCP is moving ahead to serve the needs that members have today and will have down the line. The challenges are all around us, especially the challenge for change. But now we have a fresh map, drawn with the expertise of our members and our Board, to guide us.

*By Andrew Blau  
Chairperson*



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# INTERNATIONAL UPDATE

## What Do We Do Now?

Now that the Regional International Committee (RIC) chairs are in place, the questions "what do we do now?" and "how do we do it?" join other concerns essential to the future of regional participation, such as "why are we doing this?" and "how will our efforts be sustained?"

The NFLCP formed the International Advisory Committee several years ago as an ad hoc group whose task was to look at the role of the NFLCP in an increasingly international arena of developing community media. Since then, it has become evident that cultural media education through people and tape exchanges is of primary interest world-wide.

The success of such exchanges (and the overall goals of the committee itself) lies in the ability of the coordinators to provide environments within which cross-cultural experiences can be understood, discussed and maintained for present and future audiences and participants. This requires a well thought-out game plan.

For most countries outside the United States, and for the "multi-cultural" movement within our own borders, community-based media is largely driven by issues of preservation; human life and cultural identity. Among others, these are issues that the NFLCP International Standing Committee is obligated to address when participating in international exchanges.

In order to sustain these efforts and meet our obligations reliably and professionally, a strong and effective mechanism for the administration of exchanges is ever more important. To realize this objective on a local level, and at the same time provide the International Committee with information it needs in order to address its concern for representation, responsibilities of the RICs in this first year (and on-going) are to:

1) Survey their communities and define Regional International Committee goals and objectives from a local perspective.

2) Establish a budget which reflects these goals and begin fundraising.

3) Participate in the design of the International Track at the annual convention, and other International Standing Committee projects already underway.

4) Work with the International Committee to define further organizational needs and working relationships.

In addition, primary objectives of the RICs as seen by the International Committee are to:

1) Provide a direct voice and representation on a local level of the multi-cultural/ethnic concerns surrounding the development of public access and its ability to effectively serve these same communities.

2) Provide greater opportunity for leadership development.

3) Act as a conduit for the exchange of information between national, regional and local levels of the NFLCP.

4) Participate in the development of community television world-wide through NFLCP international exchange projects.

5) Develop and facilitate other projects, conferences, educational materials and information which reflect local international, cultural and multi-ethnic interests.

*Karen Helmerson*  
International Committee Chair



## PUBLIC POLICY UPDATE

### Energizing Our Vigilant Spirit

*"Access to cable communications is founded on the principle of freedom of speech as expressed by the First Amendment of the U.S. Constitution. In our society, telecommunications, particularly television, are the predominant media for communications, and access to those media is essential for freedom of speech to be a practical reality. Effective access to cable communications includes the freedom to determine the form of expression."*

This statement from the NFLCP's Public Policy Platform supports the "public interest" principles expressed by Congress in national communications policies since 1927. As recently as last year the Senate reaffirmed these principles when the Commerce Committee said:

Much of the structural regulation of the media industry is premised on the theory that the nation will tolerate little direct regulation of content, but that the First Amendment can be advanced by regulating the structure of the industry. The Committee believes the First Amendment implies an affirmative role for the government to encourage a diversity of voices. In some instances, the First Amendment requires the government to ensure that there will be free competition of ideas and voices.

Structural regulation of the media industry has included antitrust laws, cross-ownership prohibitions, the Prime Time Access Rule, equal time provisions for candidates for elective office and cable television.

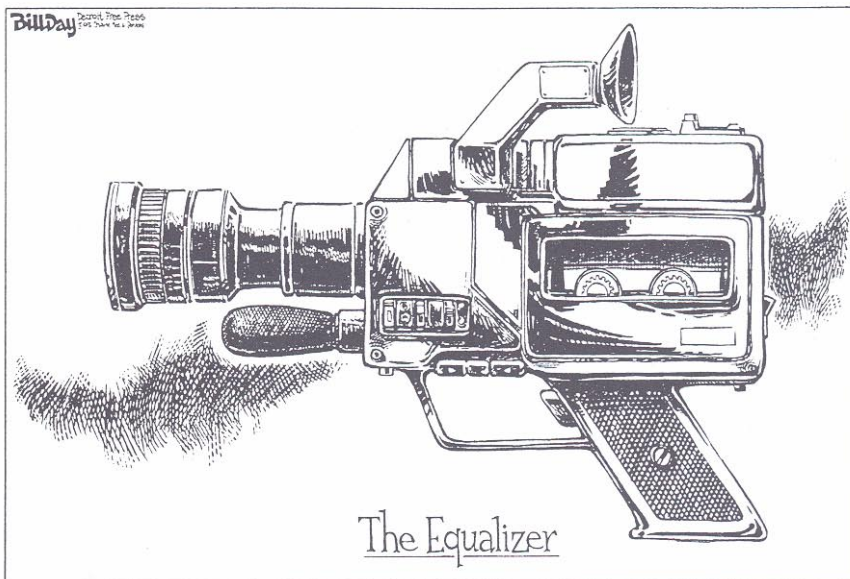
In 1984, Congress explained its intent to apply PEG access provisions to local franchises in its Report on the Cable Communications Policy Act by stating:

One of the greatest challenges over the years in establishing communications policy has been assuring access to the electronic media by people other than the licensees or owners of those media. The development of cable television, with its abundance of channels, can provide the public and program providers the meaningful access that, up to now, has been difficult to obtain. A requirement of reasonable third-party access to cable systems will mean a wide diversity of information sources for the public—the fundamental goal of the First Amendment—without the need to regulate the content of programming over cable.

Further in that report, Congress applied the structural regulation principles to cable when it said:

Access channel requirements fit squarely within the category of limited structural regulation of the media that has been consistently upheld by the courts as constitutionally-permissible means of encouraging a diversity of information sources. Cable access regulations are content neutral, yet substantially increase the number of voices that can reach the home. Access requirements may provide a way of promoting diversity without straining the First Amendment....Thus there can be no doubt that the purposes of access regulations serve a most significant and compelling government interest—promotion of the basic underlying values of the First Amendment.

Similarly, the House of Representative's Committee on Energy and Commerce in 1990 again endorsed the principle that PEG channels serve a substantial and compelling government interest in diversity, a free



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market of ideas and an informed and well-educated citizenry by declaring:

The Committee believes that PEG access programming is an important complement to local commercial and noncommercial broadcasting to ensure that the government's compelling interests in fostering diversity and localism, providing educational and informational programming, and promoting the basic, underlying values of the First Amendment, are advanced by cable television. It has been demonstrated that where PEG channels exist, these interests have been well served.

Unfortunately, during the last 10 years several Federal Administrative Agencies have interpreted the "public interest" to mean "what interests the public"—a mere popularity contest in the commercial marketplace of ideas. Democratic values in communication policies are being replaced by commercial interests who view citizens as passive consumers instead of active participants in the democratic process.

James Madison once stated that liberty is protected by the "vigilant...spirit which actuates the people of America." There is no better time for those of us concerned with citizen participation in the electronic media to energize our "vigilant spirit."

Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects...That is why freedom of speech, though not absolute...is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.

There is no room in the Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

Carl Kucharski  
Public Policy Committee Chair

### Faith In The First?

"As the bicentennial of the Bill of Rights neared, the first wave of a nationwide study found that Americans rate free speech as their second most precious First Amendment right and regarded a free press highly—in the abstract. But when questioned about specifics, those surveyed during 1990 displayed an alarming willingness to remove legal protection from forms of free expression they merely disagreed with or found offensive."

And so begins the Executive Summary to *Free Expression and the American Public: A Survey* commemorating the 200th Anniversary of the First Amendment. The basic conclusion of this report—"it is apparent that free expression is in very deep trouble."

A few examples of findings from the 1500 Americans surveyed found that only one-third of those surveyed would protect the right to buy magazines with nude pictures; nearly 60 percent would not protect flag burning and only 20 percent would protect the use of slang words referring to sex.

The report is available for \$5.95 from The American Society Newspaper Editors Foundation, Box 17004, Washington DC 20041 (703) 648-1144.



# Access and the First Amendment: What Price Freedom of Expression?

**T. Andrew Lewis**

Executive Director, NFLCP

**‘W**hat price? Has the NFLCP's new Executive Director cracked so quickly under the pressure? What price for the freedom and diversity of expression that is the essence of our democracy? What price?

No, the E.D. has, in fact, had his mental acuity suddenly sharpened in this arena. The game, the players, the stakes and the cost are more clear now than ever before. Sit down and listen up for a minute.

On Friday, October 25th, the FCC announced its "video dial tone" plan. This scheme would enable telcos to transport video services within their service areas on a common carrier basis. The prohibition against telco origination or cross ownership of such video programming and cable companies would remain, although there is movement afoot to eliminate this Cable Act restriction as well.

This sounds harmless, huh. Even more video programming would be available to more households. Sit down again! FCC Chair Sikes, the original author of the scheme and its primary booster, is moving toward a pure market approach to video services. This approach speaks clearly to his view toward future technologies in telecommunications as well. We are all aware of the stellar example that the commercial broadcast industry has set in meeting local communication needs! Even today, access channels (providing some 2,000 communities with more than 15,000 hours of local programming each week) produce more local programming than ABC, CBS, NBC and even PBS combined!

Nevertheless, in the "market game", there is concern, of course, that all parties—now the cable companies, broadcasters and telcos—would compete on a "level playing field". Robert Pepper, Chief of the FCC Office of Policy and Plans (and, can you believe, former access proponent) has identified the major culprit in this regard—it is the "onerous access burden" suffered by cable companies. Yes, that onerous burden of the First Amendment—perhaps like its onerous counterparts, due process, trial by jury and voting—must be lifted in favor of this market strategy. Thus, Pepper does not propose, as we do, that all purveyors and transporters of future telecommunications services take on the First Amendment responsibility of access, but rather that none need do so. The FCC takes this position despite the numerous findings of Congress that the compelling First Amendment interests of freedom and diversity of expression are well served by PEG access.

What's next. Well, cable companies are not extremely pleased. Many of them are, of course, laboring under that "onerous burden" of access as well as franchise fees. The telcos feel that the plan does not go far enough. They would like to see the cross-ownership prohibition removed. Cities are certainly not fond of their franchise fees by users of their public rights of way being cast in such negative terms. Are all the "big players" disgruntled, then? Don't shed your tears for them just yet. The prospect of cable companies, broadcasters and the cash-rich telcos striking deals is a definite possibility. The elimination of the franchise fee is not in the cards. In fact, the sources may be expanded, and any specific requirements on their use may be eradicated. And provisions for reduced regulation of broadcasters are on the horizon.

We do not begrudge cities and other governmental entities revenues that they need to serve their citizens. Nor are we so naive as to deny

the players to utilize market strategies to earn a reasonable return. We recognize that the market can spearhead the development of technology. We even concede that the market can spearhead the development of technology. We even concede that the investing of millions of dollars by "the big guys" to wage this war is no more sinister than accepted current practices in this arena.

We are, however, outraged at the planned demise of access to the emerging technologies for local communications whose success, though constantly under siege, has been undeniably proven. Yes, I said demise—death—collapse—fall—the end—of PEG access. Just as we have seen in the medical field, for example, technology is of no consequence to the masses who continue to die if access to those technologies is denied because of cost or market structure and interest. No more access. Those are the stakes.

What to do?

First, understand that the time is now. Become educated and vigilant, and then become an educator of others. This is perhaps the most threatening "official" attack on access ever planned. I have spoken of the "big players", but do remember that the biggest group of players are the 250 million citizens who were the intended recipients of the fruits of the First Amendment. We—you, me and this unique organization—represent them in this fray.

Second, act! You will receive information and calls for action from us very soon. Act. We cannot afford to have these letters placed in the file drawer for action at our convenience. Everyone with an interest in access must act. And that should be everyone—access centers, educators, municipalities, producers, viewers and beneficiaries of the First Amendment.

Finally, support your convictions. Invest in your belief in free and diverse expression. The NFLCP is the sole, national organization dedicated to protect and expand those convictions and beliefs. Yet, over seventy percent of our individual members (just under fifty percent of all members) have enrolled in the low-income category, and pay just \$15 per year for services and support. This situation would be good news if it

represented a tremendous increase in grassroots participation, but it does not. Total membership has not increased. This results in less than adequate support that sends a message to the FCC and the "big players", and should send a message to us. We do not request millions of dollars to put into this battle. Despite its critical importance, I do not believe that to be the best use of such huge sums. We do, however, deserve the involvement and support of millions of diverse Americans—beginning with you and me.

What cost, then? Our cause deserves the greatest amount of financial support that each of us can muster in dues and contributions. Your past support has been so vital to our efforts. Do not, now, undercapitalize the First Amendment. Do not under-finance your commitment to the access institution. It may be an alternative communication artery through which the desperation of our young people can be re-channeled from its current network of blood-filled streets. Or it can be a conduit for learning in an era of gruesome slashes in the budgets of educators. It might represent a channel which revitalizes the interest of turned-off citizens in the political process. Perhaps it is the purest source of local information, opinion and entertainment.

Whatever personalized use for it conceived by the people, the freedom and diversity of expression made possible through access cannot now be lost. It must not be lost—at any cost. It is priceless. ■



**‘Finally,  
support your  
convictions.  
Invest in your  
belief in free  
and diverse  
expression.’**



## America & the Bill of Rights at a Historical Crossroads

RICHMOND, VA — In this capitol of the Confederacy over 200 First Amendment scholars and practitioners gathered for three days this past October to wrangle over the past, present and future of this miracle document during the National First Amendment Congress. The delegates were seated in a sparkling gem of the south, the Virginia State Capitol, designed by Thomas Jefferson in 1788 and the very spot that the Bill of Rights was ratified on December 15, 1791.

Congress President John R. Finnegan, Sr. and Executive Director Claudia A. Haskel challenged delegates, and us all, to think long and hard about this document as it finds itself at an historical crossroads on its bicentennial birthday. What follows is their introduction to the First Amendment Congress.

### Bill of Rights Turns 200

**D**ecember 15, 1991, marks the 200th anniversary of the ratification of the Bill of Rights. This year we not only celebrate two centuries of our own freedom, but as nations around the world adopt principles of democracy, open markets, and freedom of speech, press and religion, we will join in the celebration of their newly found liberty.

As citizens of the free world, Americans have much to be grateful for. However, before the nation becomes absorbed in another bicentennial celebration, we encourage Americans to enter a period of study, contemplation and dialogue about the future of the Bill of Rights.

As our society heads into its third century, people are questioning whether their freedoms work for them, or against them. They are affected by terrorism. Drugs. Gang warfare. Rampant crime. Official secrecy. They are appalled by the lack of integrity in people they need to trust.

Americans are troubled by confrontations over flag burning, obscene photographs and music. They question rights long held sacred, because those rights seem to conflict with values held equally sacred.

New technologies outdate current privacy and public "right to know" standards at increasingly rapid rates. If citizens do not understand the real and potential effects of new technology on individual privacy and access to information, new judicial interpretations and statutes may not reflect the consensus of society.

The media face similar concerns. They seek to maintain balance on a constantly shifting tightrope of personal privacy, access to information and government accountability. Research indicates declining public confidence in the credibility of the press. If the American people do not support a free press, the courts will be encouraged to restrict journalists' access and ability to investigate government affairs. If government information is not accessible to members of the press, it cannot be accessible to citizens.

Did our Founding Fathers have the foresight to know the complex conditions we would face today when they developed the Bill of Rights? If they were here now, how would they react to our current state

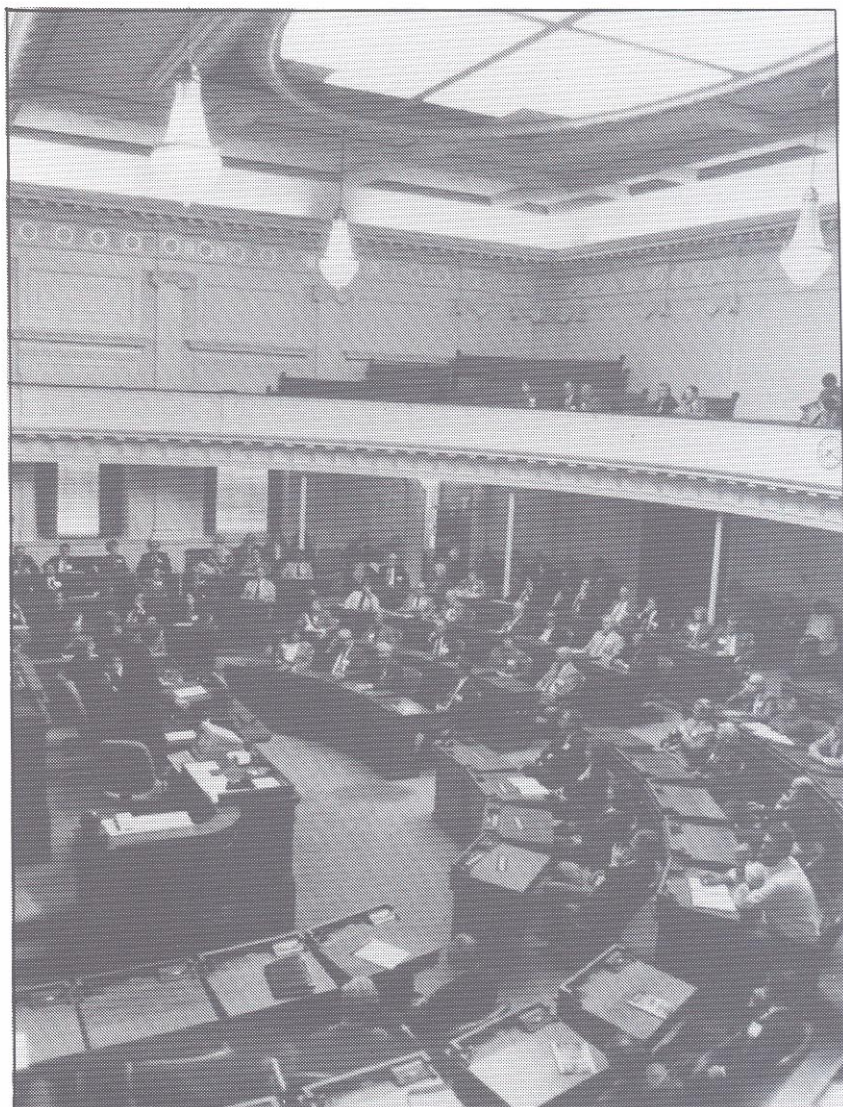


PHOTO BY PETER LOWE

of affairs? Would they consider limiting the "great freedoms" in order to secure a safer society?

Significant and evolving issues promise to reshape interpretations of the First Amendment and the Bill of Rights in the 21st century. Even as new democracies adopt the rights we secured 200 years ago, America is at a historical crossroads. One road turns away from our great experiment of individual freedom. The other preserves the rights that have made citizenship in this country the envy of millions around the world.

The choice is ours.

John R. Finnegan, Sr., President  
First Amendment Congress

Claudia A. Haskel  
Executive Director

*The Virginia House of Representatives in the state capitol at Richmond, designed by Thomas Jefferson and the site of the ratification of the Bill of Rights, December 15, 1791.*

**IF YOU WANT TO LEARN MORE**  
about the First Amendment Congress  
and how you can become involved in  
preserving freedom of expression,  
please contact:

First Amendment Congress  
1445 Market St. Suite 320  
Denver, CO 80202



## Free Speech Is...

Indispensable for the development and extension of...knowledge, a consideration of much practical import.

In the first instance it must be guaranteed by law. But laws alone cannot secure freedom of expression; in order that every man may present his views without penalty, there must be a spirit of tolerance in the entire population. Such an ideal of external liberty can never be fully attained but must be sought unremittingly if scientific thought, and philosophical and creative thinking in general, are to be advanced as far as possible.

Albert Einstein

...merely an expression of free thought. Keep thinking, keep speaking.

Dirk Koning  
Access Center Director

...the ability to say whatever is on our heart, on your mind and in your soul without the fear of censorship. And it is the responsibility to handle the consequences.

Free Speech is America.  
Free Speech is Public Access television.

Cheryl Michel  
Access Center Director

# Public Access as a 'High-Tech' Public Forum

by Michael I. Meyerson

Professor of Law, University of Baltimore

A democracy requires freedom of expression. If a free people is to govern itself and lead lives as autonomous individuals, there must be freedom to communicate ideas and learn from one another. While the Constitution guarantees freedom of speech, it does not specifically spell out how that freedom operates in a wired village, how the 18th Century concept of freedom operates in a time of fiber optics and pay-per-view. To understand how these issues are likely to be decided, it is necessary to walk through the legal background upon which the future will be created.

In the beginning, there was the public park and sidewalk. The ground may belong to the government, but the people retain an inviolable right to speak their minds on the streets and parks. The government lacks the power to prohibit the uses of streets for the communication of ideas. As the Supreme Court has said, "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens." *Hague v. CIO* 307 U.S. 496 (1939).

In other words, one of the attributes of being a free citizen, of being an American, is the ability to use streets and parks for First Amendment activity. Not all governmental property is created equal, however. You obviously cannot go inside a courtroom where a trial is taking place and picket and leaflet indoors.

To help draw some lines, the Supreme Court has stated that there are three types of public property. The first are the streets and parks, the quintessential public forums. The second type of governmental property, "consists of public property which the state has [voluntarily] opened for use by the public for expressive activity." The State is not required to permit speech here indefinitely, but while it does, "it is bound by the same standards as apply in a traditional public forum." The third type of property is that which is *not* set aside for "public" communication, and government can silence all speakers or regulate the content of the speech given, if "not an effort to suppress expression merely because public officials

oppose the speaker's view." *Perry Educators' Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983).

To determine whether public access is a public forum, we must decide into which category it falls. Although cable uses the public streets for laying the wires and creating the system, it is unlikely the courts will find public access, an invention of the late 1960s to be a traditional public forum, used by the public for "time out of mind." Rather, courts should rule that public access is a type-two, designated public forum.

The key question turns on how the forum was created. The Supreme Court stated that the street leading to a United States Post Office from the parking lot,

may not be a public forum even though some have been allowed to leaflet and speak, "The government does not create a public forum by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *United States v. Kokinda*, 110 S.Ct. 3115 (1990). Similarly, the Court ruled that a charity drive for federal employees, was not a public forum without, "evidence of a purposeful designation for public use." *Cornelius v. NAACP Legal Defense & Education Fund*, 473 U.S. 788 (1985).

Fortunately for access programmers, there is not only "evidence of a purposeful designation for public use," such designation is required by federal law. Section 611 of the Cable Communications Policy Act of 1984 (the Cable Act), permits cities to set aside channels for "for public, educational, or governmental use." (47 U.S.C. 531). Congress stated that the public access channels, "would be available to all." H.R.Rep. No. 98-934, 98th Cong., 2d Sess. 36 (1984) (the "House Report"). Thus, public access is mandated to function as a public forum.

There is one last definitional problem which needs to be faced. Cable operators have claimed that access conflicts with their right to control their own property. At first, this is not an outlandish contention. Normally, there is no right to speak on someone else's property. You cannot walk into someone's house or store and demand to speak if the property owner tells you to leave.

As the Supreme Court has stated, "An uninvited guest may not exercise general rights of free speech on property privately owned. It would be an unwarranted infringement of property rights to require them to yield to the exercise of First Amendment rights." *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972). This is a recognition that, as a general rule, private

While the Constitution guarantees freedom of speech, it does not specifically spell out how that freedom operates in a wired village, how the 18th Century concept of freedom operates in a time of fiber optics and pay-per-view. To understand how these issues are likely to be decided, it is necessary to walk through the legal background upon which the future will be created.



property is not a public forum.

The Supreme Court, though, has been able to recognize the practical limitations of a simplistic public/private dichotomy. For example, the Court recognized that "the company town," where a private commercial enterprise owns all of the property in a community should be regarded, for First Amendment purposes, as more public than the front lawn of a private home: "Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." *Marsh v. Alabama*, 326 U.S. 501 (1946)

The Supreme Court has been reluctant to carry this line of reasoning too far. For example, there is no First Amendment right to leaflet in a private shopping mall. *Hudgens v. NLRB*, 424 U.S. 507 (1976). But one of the interesting aspects of the American system of government is that individual states can provide greater rights than the Federal government. Now a state does not have the ability to decrease your rights and take away rights the Supreme Court says you have. A state, however, can build on those rights and increase individual freedom beyond the minimum required by the U.S. Constitution.

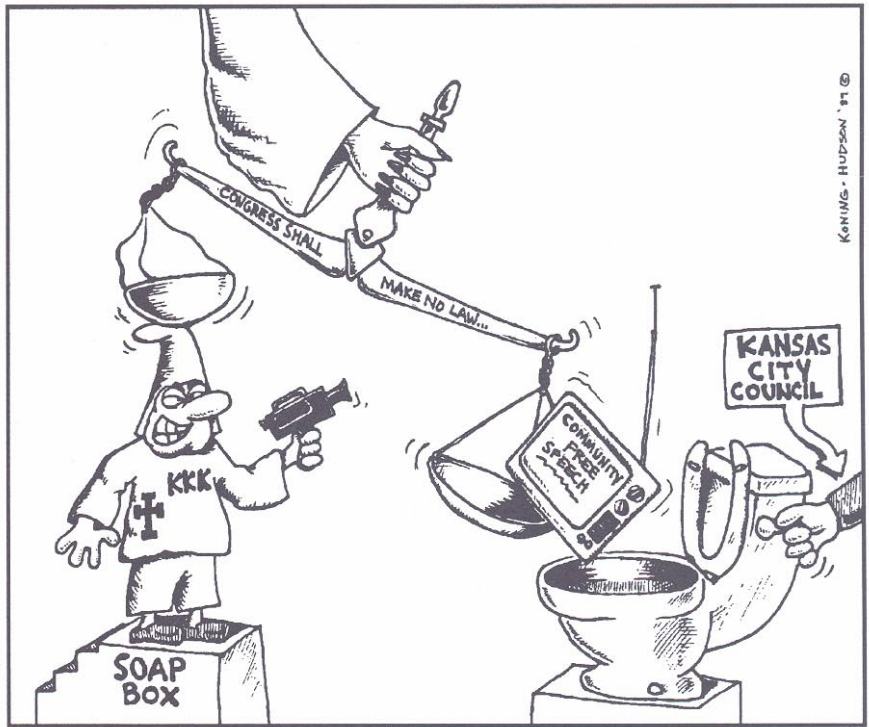
Thus, even though the Supreme Court said there was no right to leaflet in a private shopping center, California ruled that right of speech in California included a right to peacefully leaflet in a private shopping center. When shopping center owners complained that they were being deprived of their right to control their own property, the Supreme Court held that the state had indeed acted properly. Moreover, the Supreme Court ruled that this right of access did not violate the mall owner's right to remain silent.

The center is, "a business establishment that is open to the public to come and go as they please. The views expressed by members of the public in passing out pamphlets ...will not likely be identified with those of the owner. Second, no specific message is dictated by the State to be displayed. There consequently is no danger of governmental discrimination for or against a particular message. Finally, [the shopping center] can expressly disavow any connection with the message by simply posting signs in the area where the speakers or handbillers stand." *PruneYard Shopping Center v. Robbins*, 447 U.S. 74 (1980).

When a state or city creates in a franchise an obligation that channels be set aside for public use, it does not matter whether those channels are termed private or public property. From the point of view of the programmer, the access channel is a public forum.

Government's ability to restrict expression in a public forum is very limited. Content regulation is strictly prohibited, unless it is absolutely essential for serving a compelling governmental interest. The only type of regulation likely to be permitted is what is termed "time, place and manner" restrictions. Don't think this means you can put politically unpalatable

**...the public access community must rise to the challenge, and, with camera and film, ensure that the public forum of public access is used for the public good.**



programming on at 2:00 a.m. The hallmark of a valid time, place and manner restriction is that it must be content-neutral, treating all speakers and all viewpoints the same. One example would be a requirement that all programmers use the same size video tape.

Valid time, place and manner restrictions must also avoid a significant government interest and leave open ample alternative channels of communication.

Finally, the restriction must focus on speech directly affecting the government interest, and not be "substantially broader than necessary." An example of a recent valid restriction was New York City's requirement that rock concerts in public parks use a city-provided sound system and city technicians to protect its citizens from unwelcome noise. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

We pay a price for the success of access being a public forum. Those we despise, those with views of hatred, ignorance and intolerance, may use our public access system. Kansas City was unable to stop the Klan, either through direct censorship or the self-immolation of closing the access channel altogether. *Missouri Knights of the Klu Klux Klan v. Kansas City*, 723 F.Supp. 1347 (W.D. Mo. 1989). Yet public access remains the best way for fighting the bigots.

We have the ability, and hence the moral duty, to use our skills to out-program, and out-speak the few who would cause such pain. Whether the hate-mongers come in a sheet or wearing a suit and tie, the public access community must rise to the challenge, and, with camera and film, ensure that the public forum of public access is used for the public good. ■

## Free Speech Is...

**Free speech is expensive. It cost lives to win. Child, lover, home, have all been sacrificed to its winning.**

**Free speech is fragile. It has no guarantee other than the hearts and minds of the people. Only people cherishing the creativity, the music, the dance, the soul and spirit of one and other create it, win it, keep it.**

**Free speech is living. If the people use free speech it grows and becomes more free. If the people neglect to speak, freedom withers.**

**Free speech is costly, cherish it. Use it and it will grow. Free speech is all our speech. Join the chorus.**

**Kary Love  
Attorney**



## The First Amendment—45 Fightin' Words

by Dirk Koning

Executive Director,  
Grand Rapids Community Media Center



Recently I had the good fortune to be a delegate to a gathering of 200 national leaders in First Amendment thought, called the First Amendment Congress. For three days the delegates wrangled over topics like: expressions in the arts and entertainment; resolving the clash between defenders of decency and champions of free expression; the First Amendment in cyberspace; and community rights v. individual rights.

One highlight of the Congress was the seating of the delegates in the Virginia House of Representatives in the state capitol in Richmond. The building was designed by Thomas Jefferson and completed in 1788. It was on that historic spot that the Bill of Rights was ratified by the Virginia legislators on December 15, 1791.

Former Supreme Court Chief Justice Warren E. Burger delivered a keynote address on the Bill of Rights and evolving world democracies. In a press conference, Justice Burger made some interesting comments on the First Amendment. He mentioned that many foreign countries have no experience with free speech and he went on to warn, "It makes a lot of hassles, it's not very pleasant, but I hope they don't get discouraged because it's a nasty business at times. The First Amendment has a lot of negatives in it but any other option would be worse. We don't expect a neat and tidy result, there is a lot of shouting and any thing short of shouting." The Czechoslovakian ambassador to the US followed Justice Burger at the press conference and stated that when it came to the problems we think we have here with the First Amendment, that "We should have such problems!"

Justice Burger said the three most important words in the constitution and the Bill of Rights are, WE THE PEOPLE. He also added that the most important part of the two documents was the First Amendment to the Bill of Rights—45 words of simple elegance attempting to define ages old principles of human desires for freedom of religion, speech, the press, assembly and redress of grievances.

Ever since humankind evolved past the survival based "freedom" of roaming, raping and rustling up food, to the shared benefits of communal living and defense, we've fought to balance individual rights

with those of the community and our leaders. Ever since we've entrusted our communes to, or had them enslaved by, dictators, we've been forced to fight to establish basic tenants of treatment of our species. The fight continues today, here and worldwide. Our complacency should be rattled to see the life threatening struggles of people around the world attempting to win the liberties we take so much for granted.

Ever since symbols have been ascribed definition and value, human nature has fostered domination and control by those in the know.

Some question the validity of those 45 words of 200 years ago as they are applied to today's realities of telespeech and telecommunication. As these 45 words teeter into their third century some question whether these words work for them or against them. When these words were written we were a small country hugging the Eastern seacoast. The population in 1791 was four million, today it's 250 million. Then most folks lived in rural areas and small towns, today New York City alone has twice the population of the colonies.

Historical mores and taboos are dropping like flies today. People suffer angst over rap music, eye popping photographs, and cross and flag burning. Nobody said it would be pretty. I contend that the application of the First Amendment then and now is an application of philosophical principles of individual rights of species, not conditions of the majority or 'time space' relativity.

So where does public access to cable television fit in on this continuum of individual liberty? I guess in the intervening four million years of homosapien evolution, we've been lucky enough to hit the right time in the right space. We're lucky enough not to have to worry about adequate food, clothing and shelter. That worry consumes the time of half the 5 billion folks who share community earth. We're lucky we have this young experiment in self government still underway after 200 years.

We're lucky to have caught an early wave in the electronic telecommunication era. We're lucky we had a liberal Federal Communications Commission in the early '70s that even thought

about public access to this thing called cable. We're lucky we've been able to ride the wave of cable expansion during the wiring of America.

We're lucky to have production and dissemination technology reduced in complexity and cost to a level that people off the street can learn to use it and we can afford to buy it. We're lucky the telco's weren't allowed into cable from its onset.

We've been lucky the trickle down fruits of franchise fees have helped build our industry. We've been

### Free Speech Is...

Free speech is the heart and soul of a healthy democracy—a tool for growth and change.

Democracy is based on a trust of people—a trust that informed and empowered people make decisions for the common good while respecting the civil liberties of all.

Through free speech, a healthy democracy allows and encourages diverging and opposing viewpoints. The majority viewpoints of the day—the earth is the center of the universe, only white American males with property may vote—can be discarded in favor of ideas previously thought to be radical or heretic—the earth is a relatively tiny part of many cosmic systems; all persons are created equal, and are endowed with certain inalienable rights.

Some corporations, including cable companies, are boldly, powerfully and expensively making the outrageous claim that free speech entitles them the use of public property for private gain with no resulting obligation to the community.

We have the right and obligation to reclaim free speech as the tool of change and growth.

Alan Bushong  
Access Center Director



lucky we could latch onto the ass of the cable industry like a leech and suck for our survival.

But luck has a way of running out. Laws of evolution and relativity don't hold luck in very high esteem. Survival favors the fittest, not necessarily the luckiest. So we've been lucky, so what, now what, well let's thank our lucky stars, pull our heads out of the sand of convenience and prepare for the onslaught and assault on our very existence.

Our host industry, while very supportive in some communities, has others where the constitutionality of access channels is being challenged in court on First Amendment grounds. The host industry we've attached ourselves to, or more accurately, we've been legislatively propagated from, may be swimming up stream to spawn and die. The telco's have been unleashed to compete with cable or more realistically, just scarf up all its eggs.

The price to buy, install and maintain a foot of fiber optic cable is now cheaper than that of copper coax. The least large of the seven regional Bell operating companies independently reports more annual revenue than the top 100 cable MSOs combined.

Information, whether originated as print, radio, television or electronic data is being reduced to binary coded on/off pulses of laser generated light, traveling near the speed of light down fiber lines at gigabit frequencies. Our government seems to think separation of conduit and content controls can be eradicated in the name of competition.

Questions we need to ask and answers we need to influence are, who is going to own the fiber, who decides who gets on it and who doesn't, who decides if the light pulses are legal or not and who sets the fees for access and retrieval. The historical definitions and delineations of radio, television and other electronic media and the policies governing those media are facing a wholesale and fundamental turning point. Technology has always driven policy and is out pacing it in quantum leaps today.

America's laissez faire approach to its communication infrastructure has benefited public access in the short term by allowing cable franchise fees to subsidize our growth but it can ultimately eradicate us by forcing us into the marketplace to pay for spectrum space by the minute.

I know when our non-profit organization picks up the phone to make a call, we pay the same rate per dial as multi-million dollar for profit corporations down the street. I heard a R-BOC V.P. state recently on a panel that his company's history is to charge for, "every sliver of frequency" and they intend to do just that in cable unless ordered otherwise by regulation.

On another front, I had the chance to talk to the Executive Director of the National American Civil Liberties Union, Ira Glasser, recently and the ACLU

hasn't been totally convinced that Public Access channel mandates in franchises are not in fact a violation of the cable industry's First Amendment right or even the 5th or 14th Amendment provisions against taking of public property without due process.

It scares the hell out of me to think that the champion of civil liberties isn't sure it would side with us on the constitutional foundation of our very existence and being. In our minds we have made the electronic leap from the soap box in the town square to locally-mandated free channel space on a private company's line. This, in a country that is built on free enterprise and capitalism. But if that theory is only in our minds, we are in deep dung.

Public access to cable television as we know it may have reached its zenith.

So now what do we do? Look for jobs in the telco industry? Maybe...but we should get scared and then get smart. Our mission hasn't exclusively been to give people cable TV shows.

Our mission has been to educate, to teach people about media, visual literacy, emerging technology, and in some cases about themselves and how they view the world.

Our mission has been to help people think of TV as a tool to use not just a tit to suck.

Our mission has been to share information, music, art, photons, to empower people with knowledge and access to communication and their neighbors and leaders.

Our mission should be to lock-step with emerging media and help it to liberate our communities, not subjugate them.

Our mission should be to bend and twist and roll with the flow of data streams and light waves and virtual reality in cyberspace.

Our mission should be to diversify funding, and services and structures and allies to build community power centers for citizen access to multimedia.

Our mission should be to guard and promote the freedom of speech and expression whether it is on a soap box, or on a cable, or on a fiber, or VDT or transponder or a thin slice of wood pulp.

Our mission must be to continue to be champions of we the people rule, democracy and worldwide rights of expression and freedom.

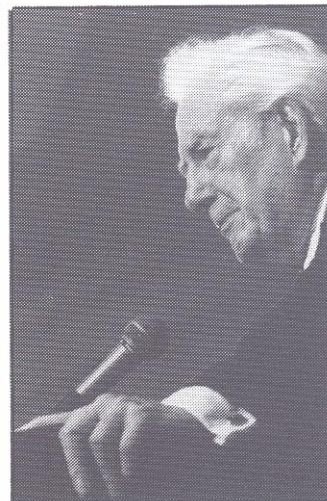


PHOTO BY PETER LOWE

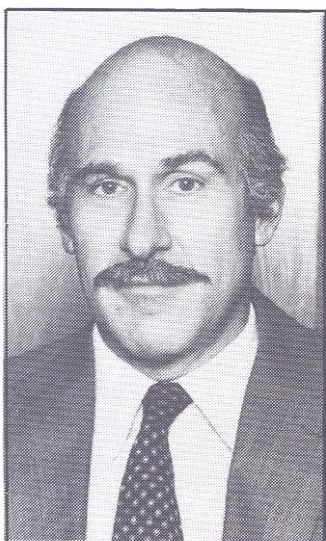
**Former Supreme Court Chief Justice Warren Burger on the new evolving world democracies and freedom of expression:**

"The First Amendment makes a lot of hassles, it's not very pleasant, but I hope they don't get discouraged because it's a nasty business at times. The First Amendment has a lot of negatives in it but any other option would be worse. We don't expect a neat and tidy result, there is a lot of shouting and anything short of shouting."

**- From a press conference at the National First Amendment Congress  
October 1991**

# We Be People





# Obscenity Law: What Does It Mean? ...And Is It Fair?

by Clyde DeWitt  
Attorney & Publisher

Reprinted from FREE SPEECH, The Confidential Bi-Weekly of Obscenity Legislation Defense, August 15, 1989

**C**an I ship compilation tapes to Portland? "Is it legal to sell gay tapes in Honolulu?" "Will the police stop harassing my store if I stock only cable versions?"

As I am sure is the case with all lawyers who are involved in representing components of the adult video industry, I am constantly besieged with questions about obscenity laws: telephone calls from industry people all across the country. The unfortunate thing is that there are no good answers to most of the questions I am asked. In all fairness, they are questions to which reasonable answers should be available.

The source of this problem is what at least one Supreme Court Justice has described as "the intractable problem of obscenity." The purpose of this article is to respond to the most popular of the unanswerable questions which I field on a relatively regular basis. I hope the following will help explain why some of these questions are unanswerable, although I'm not suggesting that people should stop asking.

A little history is in order: Prior to the early 1970s, obscenity law was very confusing. At no time had any five members (a majority) of the Supreme Court ever agreed on exactly what tests should be applied to distinguish obscene material from that which is constitutionally protected speech.

In 1969, the Supreme Court determined that citizens could not be prosecuted for possessing erotica—no matter how "obscene"—in the privacy of their own homes (*Stanley v. Georgia*). Parenthetically, you should know that prosecutors are now taking the position that this does not apply where minors are depicted, and the Supreme Court has just granted review on this issue (*Osborne v. Ohio*).

On June 21, 1973, the Supreme Court handed down a battery of obscenity opinions which largely framed the law as it stands today. The threshold question was whether a citizen's right to possess obscene materials at home gave rise to a right to purchase them and bring them there. In a 5-4 decision, the Court said no; it was permissible to prosecute someone for carting a private collection of obscene materials from one state to another (*United States v. Orito*). On the same morning, the Court also handed down a 5-4 decision ap-

proving the obscenity prosecution of someone exhibiting a movie, although in an "adults-only" theater with adequate notice to patrons. (*Paris Adult Theater I v. Slaton*). In those and three other cases decided the same day, a five-member majority of the nine Justices agreed on the "Miller test", which still stands (*Miller v. California*; *Kaplan v. California*; *United States v. 12, 200ft. Reels of Film*). Four Justices dissented, primarily on the ground that no test could be devised for obscenity which also would provide publishers adequate forewarning as to what was legal and what was not.

Even today, three sitting Supreme Court Justices (Brennan, Marshall and Stevens) continue to dissent on the grounds that the Miller test is too vague, each of them consistently casting votes in favor of jettisoning Miller obscenity statutes on fair-notice grounds.

The Miller case also eliminated any notion of "national" standards, making clear that "community standards" would be either state-wide standards or, if the state so opted, smaller communities such as counties. It is this "community standards" aspect of the Miller test which theoretically explains the crazy-quilt pattern of enforcement around the country.

The Miller test sets forth three conditions, all of which must be present before materials can be stripped of First Amendment protection:

(a) Taken as a whole, the material must appeal to what the average person in the community would view as a "prurient interest" in sex. A normal and healthy interest in sex cannot be "prurient," although an exact definition is lacking.

(b) The material must contain pictures or descriptions of sexual activities which, according to the local community standards, would be "patently offensive."

(c) Taken as a whole, the material must be without serious literary, artistic, political and scientific value.

States do not automatically have obscenity laws. Some state supreme courts have held that their state constitutional provisions forbid enacting them at all (Oregon and Hawaii); others have obscenity laws which have been declared unconstitutional and not reenacted for some time (Mississippi and Wisconsin); and in one instance, the question was put to the voters who soundly trounced the idea of adding an obscenity law to the books (Maine). Every state, however, is affected by the applicable Federal laws prohibiting the dissemination of "obscene" material by various means across state lines, including by common carrier, in the mails, and by cable. ■

## Free Speech Is...

Free speech often results in worthless speech, or damaging speech—lies, insults, distortions, mischaracterizations. Why should such "bad speech" be protected? Because the alternative is worse. The alternative is to allow the government to decide which opinions ought to be tolerated and which should be banned. And that is too dangerous.

Anyone who would allow the government to ban or punish speech should first imagine his enemies in a position to do so. In principle, perhaps falsehoods should be distinguished from truth, and prohibited. But in practice, which of us would be comfortable allowing our opponents to decide which opinions were true and which false? That is why the best way to protect our own free speech is to prohibit the government from banning anyone's free speech. It is the First Amendment's function to do that.

Ira Glasser  
ACLU Executive Director

...accepting responsibility for what you say!

Jon Koeze  
Cable Administrator

## A Free Speech Puzzle

On the right you may find George Carlin's *Seven Dirty Words*. Words can be found forward, backward and diagonally. There is a bonus word thrown in as a tie breaker.

Circle words as you see fit. Good luck, have fun.

You determine *prurient interest*. You need not participate.

These words were not determined to be obscene. In fact, the courts have said no word, in and of itself, is obscene.

Z	Q	T	W	L	S	N	U	P	W	R	X
Y	O	P	E	P	X	S	Y	C	G	T	R
A	K	W	K	Z	I	W	B	F	X	K	E
J	R	C	T	P	V	S	E	I	Z	H	K
C	U	U	V	T	I	H	S	J	K	I	C
F	M	T	N	S	O	R	Q	P	D	U	U
E	C	D	B	O	C	Z	U	H	Y	K	S
K	H	T	W	U	X	S	Y	G	V	P	K
F	L	I	N	N	R	T	S	A	W	C	
L	A	T	L	C	M	K	A	S	F	B	J
H	J	M	O	B	M	W	E	N	O	Q	C
I	Z	S	A	T	Q	K	Y	L	Z	K	K
R	E	K	C	U	F	R	E	H	T	O	M



# Freedom of Expression in Europe: Just 40 Years Young

by Nico vanEijk

Institute of Information Law  
Amsterdam, the Netherlands

Europe is called the 'old world', but this historically subjective notion is certainly not applicable to its bill of rights. Although some national constitutions go back a long time, none of them has a 200-year old equivalent of the American Bill of Rights (including its First Amendment).

Freedom of the press has often been heavily disputed and was for example already mentioned in a Swedish Ordinance of 1766 on the freedom of the printing press, but a more general conception of freedom of speech (or as I prefer to call it: freedom of expression) was not supported by most governments. Only the French declaration on human and civil rights of 1789 recognized in an early stage the freedom to communicate thoughts and opinions ('La libre communication des pensees et des opinions et un des droits les plus precieux de l'homme': the free communication of thoughts and opinions is one of the most precious rights of mankind"). The French declaration inspired a lot of national legislators, but this did not always result in immediate action.

When, for example, the Dutch parliament in 1814 discussed a change of the constitution in order to introduce freedom of the press, VanHogendorp—considered today to be one of our great statesmen—argued that a particular provision was not necessary because 'these principles do already de facto exist in our country'. At the end of the last century, freedom of the press became slowly respected and was codified in most constitutions.

The emergence of radio in the '30s was nevertheless no reason to broaden the freedom of the press. On the contrary: radio was in practically all of the countries in Europe, subject to state censorship and used for propaganda purposes (or at least less favorable political opinions were suppressed by the censors).

The way radio was abused by the German nazi regime during World War II made people realize that guarantees for freedom of expression through other media than the press were necessary. And in an afterwards-never-repeated spirit of Europeanism, the European Convention on Human Rights was adopted in 1950, of which Article 10 reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

A special European Court of Human Rights (to a certain extent comparable with the US Supreme Court, but more politically independent), which has its seat in Strasbourg, France, can supervise the acts of the member states and ensure that the freedom of expression is respected. More than 20 European states have now signed the European Convention on Human Rights and citizens of these countries can address the court.

For a long time, governments thought that they nevertheless had the powers to impose stricter regulations on radio and television because Article 10 explicitly mentions the possibility to license radio and television enterprises. Most of the existing constitutions therefore allow through a license-system, special restriction on the access to and use of audiovisual media.

However, recently the European Court has denied such an interpretation of the Convention. In its fundamental Groppera-decision, the court clearly states that radio and television are entitled to the same freedom of expression as any other means of communication. It will now be upon the various national parliaments to propose changes in their constitutions and other legal frameworks in order to bring them in accordance with the decision of the Human Rights Court.

This means that there is still a significant way to go before freedom of expression in the broad sense will become a full part of the European heritage. Until then, citizens of Europe who want Human Rights, which is only just a bit more than 40 years young and still has to look up to its grand grandfather, the American Bill of Rights. ■

**'La libre communication des pensees et des opinions et un des droits les plus precieux de l'homme': the free communication of thoughts and opinions is one of the most precious rights of mankind.**



## First Amendment Calendars

So who cares if the year is almost over, Gannett Foundation's 1991 First Amendment Calendar still packs a wallop with quotes that never go out of style, one for every day of the year, and they're free, even the postage. The calendar pays tribute to the First Amendment with a wide range of views from diverse people and periods of history.

A limited number still remain. To get yours, contact Gannett Foundation, 1101 Wilson Blvd., Arlington, VA 22209 or call (703) 528-0800. The foundation is the nation's largest information-oriented foundation, dedicated to fostering First Amendment freedoms for all people.

## Free Speech Is...

Free speech is abridged to the extent that we devalue the humanity—and therefore the legitimacy—of the speaker. In a society where the dominant culture is White, Northern European, the voices of persons of color are easily silenced, their personhood having already been measured against the "norm" and found lacking.

In a world where men exercise power, the voices of women must rise from a deep well of oppression. Speech that is truly free—speech that liberates the speaker and, with her, the world—is possible only as we grant the speaker the dignity of her humanity.

George K. Heartwell  
Pastor



## Building First Amendment Partnerships

by Rick Hayes

Allen County Public Library-Channel 10

### Additional Reading

The Association of American Publishers, Inc. is offering a bibliography of current books about the Bill of Rights. Compiled by the AAP's Freedom to Read Committee, the pamphlet lists more than 60 current titles complete with author, description, publisher, pages and cost. Free single copies are available with receipt of a SASE, or 10 copies for \$2, 25 copies for \$5. Contact the AAP at 220 E. 23rd St., New York, NY 10010 (212) 689-8920 or 1718 Connecticut Ave. NW, Washington, DC 20009-1148 (202) 232-3335.

### Free Speech is...

...my right to HEAR disparate ideas and points of view.

Free speech is defended on the basis of the speakers rights. This is the least important issue. My right to hear is the kernel of constitutional importance. At the heart of a democracy is an informed public. Speech is truly the blood of democratic government.

Totalitarian states rigidly control radio and television not because one speaker is dangerous, but because the people might LISTEN to arguments and ideas not officially sanctioned. The listener is a danger to the state.

Ray Larson  
Access Coordinator

In celebrating the Bicentennial of the Bill of Rights we should stop and reflect on those other community organizations that share our passion and appreciation for the rights contained in the First Amendment to the Constitution. One organization specifically has done much over the years to stoke the fires of intellectual freedom and maintain the development of community education: the Public Library.

Libraries and access have much in common. They both exist to inform, educate, entertain, and enlighten the public. They are both "narrowcasters" of information. Libraries do not try to provide the same facts to a mass audience. Instead, they work directly with the individual to assist them to gain access to the specific information they require.

Public Libraries have been the guardians of freedom of expression for over a hundred years in America. I know you don't often think of libraries in that way, but let me point out the foundations by which our modern libraries function.

The American Library Association is the national professional organization for librarians. ALA has created several documents that define what a public library should be and what it is to be a librarian. The first is a Code of Ethics for librarians. This sets a standard of professional behavior to encourage librarians to "provide the highest level of service...to all requests for assistance" and that all "Librarians must resist all efforts by groups or individuals to censor library materials."

Secondly is the Library Bill of Rights. This document was first adopted in 1948 and has been amended to keep current with the changing society. Among the issues listed is that, "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment:" and the "li-

braries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas."

Finally, the Freedom to Read statement which was adopted in 1971 states in its opening line, "The freedom to read is essential to our democracy. It is under attack." Further, that "we believe that free communication is essential to the preservation of a free society and a creative culture."

It goes on to list seven propositions that are based on the constitutional right to freedom of speech (and thought) with the underlying provision that "creative thought is by definition new, and what is new is different. The bearer of every new thought is a rebel until his idea is refined and tested."

I would also like to point out that in 1979 the ALA adopted the Freedom to View statement "that there is no place for censorship of any medium of expression". This statement included audiovisual materials because "they have proven to be among the most effective means for the communication of ideas."

Certainly all libraries (and librarians) do not share the same world view. In fact not all libraries have adopted these ALA statements as part of their mission. Some see television as the enemy of the literate mind. It is up to us to forge alliances with them. We have to convince them that together we can better serve the public.

Libraries have the philosophical foundation on which we can build these alliances. Our challenge is to show them that they can benefit from sharing with access TV. By speaking with them in their own terms we can build bridges to help us all reach our goals.

To sum up, libraries have years of experience in resisting censorship and they understand the power of the visual medium. They can be a treasured ally in our battle to ensure that freedom for self expression continues to exist and grow into the year 2000. ■

## *The United States Bill of Rights*

**I** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**II** A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**III** No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

**IV** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**V** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor

shall private property be taken for public use, without just compensation.

**VI** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defence.

**VII** In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**VIII** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**IX** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**X** The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.



## Youth Get in Focus at Cable Access of Dallas

**A**s we celebrate the 200th birthday of the First Amendment, it seems appropriate to acknowledge the next generation of access advocates: our young people. It is these individuals who will charter the future course of community television. At Cable Access of Dallas, youth play a vital role in producing programming for the organization's seven access channels.

This is the second year that Cable Access of Dallas has hosted 10 one-week "Get In Focus" video camps to teach children the ins and outs of television production. Executive Director Margie Johnson Reese appointed an access staffer to develop the curriculum, hire creative personnel and manage the camps.

"The children of today are the decision makers of tomorrow," says Reese. "Our First Amendment may be guaranteed, but access as a vehicle is not protected. We need our young people to be involved and understand the real issues so that they can speak out for access."

Last summer, 135 "campers" representing 10 community organizations received hands-on training to operate state-of-the-art studio and remote equipment. These seven to 16 year olds learned how to use cameras, production switchers, audio boards, lighting, video players/recorders and computer graphics. They learned how to brainstorm, script and storyboard program ideas, and each camp produced a program that was cablecast. A small tuition fee was assessed, and scholarships were available for those in financial need.

"Children have very few fears about technology," explains Reese. "They look upon the interaction with machines as a challenge." She quickly adds that as they are learning the "how to's", another side of the brain is exploding with untapped creative ideas. An artist-in-residence is retained to unleash their imagination, introduce visual arts and facilitate the creative process of transferring ideas to videotape.

Special Events Coordinator Elizabeth McKee organizes and manages the summer video camps, and serves as the lead instructor. "This (working with children) is really where my heart is," says McKee. "It's so important to reach kids at an impressionable age—then they can carry on with the vision of access television."

The camps offer structure and discipline for the children, vital components to the program, explains McKee. Each camp meets Monday through Friday for six hours daily. Participants seem to absorb more in the longer sessions, rather than in a three-hour period.

Campers are challenged both technically and creatively. Exercises using kaleidoscopes, telescopes and periscopes help campers to strengthen their visual senses. The instruments are used in nature walks, where campers evaluate texture, perspective and color in their environment. An artist-in-residence helps them to discover the tiniest of detail, and the group returns to draw what they've seen.

Reese adds that it's crucial to have children creating programs for children. "Adults may tell a story, but kids will use a totally different approach. They re-



*Cable Access of Dallas summer video campers Jade and Chris Burrowes get in focus as they operate cameras at a local celebration.*

spond to their peers—it's as if there's a connecting wire from one child to another. And kids have a story to tell, too."

A fundamental part of the camp curriculum is the use of the "Get in Focus" workbook, designed by McKee and studio manager Debbie Mason. This educational tool provides pictures and drawings of all equipment, and step-by-step operational procedures.

"Focus Fun" homework exercises are designed to help campers recognize techniques they have learned. Each evening they view 15 minutes of their favorite program, recording responses in the workbook.

Each camp has an identity: as a group they decide on a name for their production team, as well as a title for their program. On the last day of camp, participants design a colorful banner portraying their feelings about their camp experience—among their signatures are pictures of detailed drawings of video production equipment.

One element for success in the video camps is the use of "JCs", or junior camp counselors/ interns. Graduates from last summer's camps are selected to assist in instruction, and serve as role models for the younger campers. Use of the JCs elevates their self-esteem and contributes to ongoing production of programming according to McKee.

Another ingredient for success is recognition of each camper's accomplishments. Daily cheers are given to everyone, even if mistakes are made. At the end of camp, participants invite their family and friends to a special "sneak preview" of their edited program. A graduation ceremony celebrates the achievements of campers—each receive a hand-lettered certificate of completion. After this premiere showing, the tape is sent to master control for cablecast. Campers receive VHS copies for home use, and continue to serve as production crew on a regular basis.

Reese identifies the need for such summer video camps in every community. "Kids watch a lot of television in the summertime, and are intrigued by the magic of the medium," she states. "If we can get them away from the couch to see what's behind the TV, then we can help them understand the illusions. Then, they can create their own magic." ■

### Free speech is . . .

... a reality only when the social, economic and political consequences of its practice are not so severe that only the privileged few can afford to enjoy its benefits.

Free speech is the expression by others of ideas that I may hate but which I close my ears against at my peril.

George Stoney  
Filmmaker & Professor

... only as free as the speaker.

R. Visser  
Access Center Director

... your American right on any occasion to agree or disagree without fear. The right to voice your opinion on any subject... action... religion... church... political party... government.

Ruth Lehman  
Evangelist



*'You can't expect the market to take care of all of our informational and cultural needs.'*

## NATOA's 11th Annual Conference – Charting An Ocean of Change

by Martha Schmidt

Access Consultant

The National Association of Telecommunications Officers and Advisors (NATOA), an affiliate and advisor to the National League of Cities, held its eleventh annual conference in Anaheim, California, September 20 through 22, 1991.

Conference sessions and workshops covered a broad variety of topics: Telco Entry, Franchise Renewals, Budgeting for a Cable Office, Boards and Commissions, Emerging Technologies, Production Techniques, Franchise Compliance Audits and Enforcement and Current Legislation Pending in Congress. Featured speakers included Senator Conrad Burns of Montana; NATOA President Susan Herman of the City of Los Angeles; Larry Irving, staff to the House Telecommunications Subcommittee; Jeffrey Chester, Ralph Nader's Tele-Democracy Project; James Barry, CNBC; Ward White, United States Telephone Association; and Decker Anstrom and Wendell Bailey of the National Cable Television Association.

A milestone at this year's meetings was the adoption of the first NATOA Telecommunications and Cable Regulatory Policy. The 15 section policy sets forth NATOA's "Advocacy Platform" in areas such as national telecommunications policy, regulation of cable television services, consumer protection, franchise renewals and transfers, telephone company entry into cable television, and the telecommunications industry and alternative carriers.

Susan Herman, President of NATOA, stated "This policy is a comprehensive statement based on the principle that local needs and consumer interests must be represented in national telecommunications legislation and policymaking." NATOA's 1991-92 Telecommunications and Cable Regulatory Policy is consistent with the policies of municipal and local government organizations.

The NFLCP appreciates the positive and supportive stand of NATOA regarding public, educational and governmental access.

The Saturday Keynote Luncheon provided NATOA with an excellent opportunity to examine the last 20 years of cable television and its promises, review the present environment, to share thought provoking issues of communication, its role in our present and future democracy, emerging technologies, and how we might work together to dream and to advocate for more open, diverse sources of information and ideas. The keynote speaker, Jeffrey Chester, Co-Director of the Center for Media Education in Washington, DC, is involved in the Tele-Democracy Project. He was co-founder of the National Coalition of Freedom of Expression, has followed the media as an investigative reporter, created and managed the National

**PEG Access requirements serve the public interest. The reservation to public and educational institutions, and to local governments of the right to utilize a portion of the cable operator's channel capacity to provide programming and community information outside the operator's editorial control is critical to the public interest in a free marketplace of ideas within a multichannel market, whether such a market is dominated by a cable operator monopoly or otherwise.**

*—from NATOA's 1991-92 Advocacy Platform*

Media Campaign to Reform Public Television, and has been a television producer. Chester's Keynote speech "The Consumer Comes First" also featured video tape clips from a 1972 video tape by the cable industry outlining the promises of the democratization of our communications system via new programming which would ensure diversity of thought and ideas and local citizens would have access. Chester also showed a Pacific Telesis tape from 1991 outlining the next generation of promises.

Chester challenged the telecommunication officers to be involved and active and be considerate of "public interest needs, consumer needs, access needs, and the needs of cities...helped to defend public, educational, and governmental access when it's under attack and under funded."

He challenged NATOA on the "eve of a new television system" stating that broadcast and cable television have failed us as citizens and consumers. He urged that "We must learn from the lessons of the past so we won't make the same mistakes again. The public citizens have First Amendment rights too. A right to have access and control over programming, a right to have a television system that serves its informational and educational needs, not only locally, but throughout the state and nationally. The cable, telephone and broadcasting industries claim their First Amendment rights, but the public has been left out of that debate...The future of our country depends on the quality of our communication system...We have to ensure that this television system serves our country...unless the public interest community, the consumer community, and the municipal community join together, we are going to end up with (in the next television system) what we ended up with now."

Chester challenged listeners to pay attention to the critical crossroads we are at via the new technologies, the telephone company entry into delivery, and more importantly the increasing monopoly of media by a few corporations coupled with the FCC's continuing de-regulation of all electronic media for the market place of commercial ideals.

He shared hard examples of the dangers and

challenges to our society and to us as media activists, "that our democracy, the quality of life for our children really depends on a free flow of ideas and a media mechanism that has lots of points of view...not to have half a dozen companies control all the means of communication, particularly when you look at how those companies have used the media for narrow commercial gains. No new service could be added unless it makes a lot of money. No new service can be added if it competes with the already existing owned equity investment...less profitable or controversial ideas get shut out in that kind of system. This trend towards concentration of ownership has serious implications to the future of the country."

"...the First Amendment must be valued, but there are other values that need to be affirmed. And those values involve the future of our children and the quality of life they will have. Television is such an important influence. Television is a utility. Television is now a necessity...up until now the media industries have framed the debate, and we have to take that away from them. They've been able to say that the marketplace of ideas is really the advertising market place. The public interest doesn't work that way. You can't expect the market to take care of all of our informational and cultural needs."

Chester warned NATOA against complacency about the new technologies, fiber optics and telco entry into delivery. The plan in Washington for the possibilities of signal compression and fiber optics are only discussed in their commercial contexts. No public interest or educational space is part of the discussion. He encouraged local franchising authorities to take the initiative to build coalitions and to maintain a leadership role in the public interest and consumer issues. To dream and to design new public interest programming ideas and to work actively to achieve them. He urged everyone not to be seduced by promises that will not be fulfilled but to identify and work for the public interest needs of the future.

In conclusion Chester stated, "We have to continue the advances made in this country over the last 20 years. The Civil Rights Movement, the Women's Movement. We have to improve our local economies. We have to make sure that the telco giants work in terms of the public interest. We have to complete the American Revolution in the 21st Century. We have to give our gift to our children that the television system gives them something more...I don't know what it is. You folks are going to help shape that, but we have to give them that gift. Our country deserves it. I think the future of this country and the quality of life in this country depends on that information system. I think our freedom depends on it. So, let's work together. Thank you." ■



## EXECUTIVE DIRECTOR Access Sacramento

Access Sacramento, a non-profit public access management organization serving the residents of Sacramento, California, seeks applicants for the position of Executive Director.

The successful applicant must have extensive experience in the areas which directly relate to the responsibilities of this position: administrative management, long range planning, development/fundraising, community relations, promotion, marketing, and staff supervision. In addition, applicants must have a strong commitment to the mission of public access and an understanding of applicable laws.

Access Sacramento began operations in 1986 and has achieved a reputation of leadership and innovation in the public access field. Dozens of Access Sacramento programs have been selected as finalists in national and regional video competitions, and over 20 have been honored with 1st place awards. Access Sacramento received the Hometown USA Video Festival's "Overall Excellence in Public Access" award in 1989 and 1991. Sacramento will host the NFLCP annual convention in 1994.

Potential applicants must obtain the detailed job description and application forms by writing to Access Sacramento, c/o Rory Culhane, P.O. Box 4842, Walnut Creek, CA 94596.

**Completed applications must be received no later than 12:00 noon on Friday, January 17, 1992.**

*Now Available from the NFLCP*

# CONTROVERSIAL PROGRAMMING

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advance for controversial programming and  
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### NFLCP POSITION AVAILABLE

## **OFFICE MANAGER/ PROGRAMS MANAGER**

Assist Executive Director in the day to day tasks of the National Office including filing, communications; clerical and fiscal duties; information and referrals; publication orders; membership processing; direct liaison with members; liaison with regions and chapters as needed.

Requires excellent oral and written communications, clerical and organizations skills as well as good professional judgement. Administrative and community television experience, substantial PC knowledge and B.A. strongly preferred.

Salary range: Mid-teens to mid-20's, depending on qualifications.

Apply immediately. Send resume to T. Lewis, NFLCP, 666 11th St. NW, Suite 806, Washington, DC 20001. Telephone (202) 393-2650 Fax (202) 393-2653.

### National Federation of Local Cable Programmers Request For Proposals Community Television Review Coordinator

The NFLCP is soliciting proposals for a Community Television Review Coordinator. The Coordinator will be responsible for the publication of the CTR.

The duties include (but are not limited to) soliciting and editing articles, coordinating the sale of advertising space in the CTR, design and layout, arrange for mailing, and acting as liaison to the National Board and the CTR Editorial Board.

Preference will be given to contractors having access to desktop publishing and electronic mail capabilities.

To receive the RFP packet contact:

T. Andrew Lewis  
Executive Director  
National Federation of Local Cable Programmers  
666 11th Street, Suite 806  
Washington, DC 20001  
(202) 393-2650  
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The NFLCP is an equal opportunity employer.

Proposals are due by December 31, 1991





## Program Guide

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Metropolitan Access	Tue 11:33pm
Sunday Jun 17	
6:00am Welcome to Access	
7:00am Town Council	
9:00am Real Estate Investment Today	
9:30am River Fellowship	
10:30am Welcome to Ohio	
11:00am Talk Live	



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## WANTED! PRODUCERS FOR



Volunteers are wanted to produce segments for this national award winning show.

This video magazine features the stories and successes of people with developmental challenges such as mental retardation cerebral palsy and autism.

For more information call or write:

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*The right of dissent...the  
right to be wrong, is surely  
fundamental to the existence  
of a democratic society. That's  
the right that went first in  
every nation that stumbled  
down the trail toward  
totalitarianism.*

—Edward R. Murrow

04/24/92 EIG CS N  
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